

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

2012 MAY 17 PM 1:03

Form To Be Used By A Prisoner in Filing a Complaint
Under the Civil Rights Act, 42 U.S.C. § 1983

DEPUTY CLERK

AC

STEVEN MICHAEL BACKSTROM #1657938
Plaintiff's name and ID Number

W.P. Clements unit(TDCJ-ID)
Place of Confinement

2-12 CV-116-J

CASE NO:

(Clerk will assign the number)

v.

RICK THAYLER, P.O. Box 99, Huntsville, Tx. 77432-0099
Defendant's name and address (Director, TDCJ-ID)

JOHN ADAMS, 9601 spur 591, Amarillo, Tx. 79107-9606
Defendant's name and address (Sr. Warden, W.P. Clements unit(TDCJ-ID))

STUART WILLIAMS, 9601 spur 591, Amarillo, Tx. 79107-9606
Defendant's name and address (Manager/Head Supervisor, W.P. Clements unit
(DO NOT USE "ET AL.") Shoe Factory)

INSTRUCTIONS - READ CAREFULLY

NOTICE:

Your complaint is subject to dismissal unless it conforms to these instructions and this form.

1. To start an action you must file an original and one copy of your complaint with the court. You should keep a copy of the complaint for your own records.
2. Your complaint must be legibly handwritten in ink, or typewritten. You, the plaintiff, must sign and declare under penalty of perjury that the facts are correct. If you need additional space, **DO NOT USE THE REVERSE SIDE OR BACK SIDE OF ANY PAGE.** ATTACH AN ADDITIONAL BLANK PAGE AND WRITE ON IT.
3. You must file a separate complaint for each claim you have unless the various claims are all related to the same incident or issue or are all against the same defendant, Rule 18, Federal Rules of Civil Procedure. Make a short and plain statement of your claim, Rule 8, Federal Rules of Civil Procedure.
4. When these forms are completed, mail the original and one copy to the Clerk of the United States Court for the appropriate District of Texas in the Division where one or more named defendants are located, or where the incident giving rise to your claim for relief occurred. The list labeled as "VENUE LIST" is posted in your unit law library. It is a list of Texas prison units indicating the appropriate District Court, the Division and an address of the Divisional Clerks.

CONTINUED FROM PAGE...1;

Defendant(S);

Elizabeth Boerlin, P.O. Box 99, Huntsville, Tx. 77342-0099
(TDCJ Risk Management Supervisor)

C.A. Harrell, W.P. Clements unit, 9601 spur 591, Amarillo, Tx. 79107
(W.P. Clements unit Program Supervisor-III)

Nikelle Grant, W.P. Clements unit, 9601 spur 591, Amarillo, Tx. 79107
(W.P. Clements unit Safety Officer-I)

C.F. Hazelwood, T.C.I. , P.O. Box 99, Huntsville, Tx. 77342-0099
(Executive Director, Texas Correctional Industries)

John Doe, Executive Director of the American Correctional Association
(or) its highest ranking individual(S) assigned to audit and/or assess
the safety issues of the W.P. Clements unit (TDCJ-ID) Shoe Factory
"DESMA" soling Machines.;

John Doe, Executive Director of the Texas Dept. of State Health Services
(TDSHS) (or) its highest ranking individual(S) responsible for investi-
-gation(S) of accident(S) reported by the TDCJ-ID Officials and/or
certify the W.P. Clements Shoe Factory "DESMA" soling Machine(S)(x4)
as being SAFE....

1. In order for your complaint to be filed, it must be accompanied by the filing fee of **\$350.00**.
2. If you do not have the necessary funds to pay the filing fee in full at this time, you may request permission to proceed *in forma pauperis*. In this event you must complete the application to proceed *in forma pauperis* (IFP), setting forth the information to establish your inability to prepay the fees and costs or give security therefore. You must also include a six (6) month history of your Inmate Trust Account. You can acquire the application to proceed IFP and appropriate Inmate Account Certificate from the law library at your prison unit.
3. 28 U.S.C. 1915, as amended by the Prison Litigation Reform Act of 1995 (PLRA), provides, "...if a prisoner brings a civil action or files and appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee." Thus, the Court is required to assess and, when funds exist, collect, the entire filing fee or an initial partial filing fee and monthly installments until the entire amount of the filing fee has been paid by the prisoner. If you submit the application to proceed *in forma pauperis*, the Court will apply 28 U.S.C. 1915 and, if appropriate, assess and collect the entire filing fee or an initial partial filing fee, then monthly installments from your Inmate Account, until the entire **\$350** filing fee has been paid.
4. If you intend to seek *in forma pauperis* status, then do not send your complaint without an Application to Proceed IFP, and the Certificate of Inmate Trust Account. Complete all the essential paperwork before submitting it to the Court.

CHANGE OF ADDRESS

It is your responsibility to inform the Court of any change of address and its effective date. Such notice should be marked "**NOTICE TO THE COURT OF CHANGE OF ADDRESS**" and shall not include any motions(s) for any other relief. Failure to file a NOTICE TO THE COURT OF CHANGE OF ADDRESS may result in the dismissal of your complaint pursuant to Rule 41(b), Federal Rules of Civil Procedures.

I. PREVIOUS LAWSUITS:

- A. Have you filed any other lawsuits in the state or federal court relating to imprisonment? _____ YES xxx NO
- B. If your answer to "A" is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, giving the same information.)
 1. Approximate date of filing lawsuit: N/A
 2. Parties to previous lawsuit:
Plaintiff(s): N/A
Defendant(s): N/A
 3. Court (If federal, name the district; if state, name the county) N/A
 4. Docket Number: N/A
 5. Name of judge to whom case was assigned: N/A
 6. Disposition: (Was the case dismissed, appealed, still pending?)
N/A
 7. Approximate date of disposition: N/A

II. PLACE OF PRESENT CONFINEMENT: W.P. CLEMENTS UNIT, 9601 spur 591
Amarillo, Tx. 79107-9606

III. EXHAUSTION OF GRIEVANCE PROCEDURES:

Have you exhausted both steps of the grievance procedure in this institution? xxx YES NO

Attach a copy of the Step 2 grievance with the response supplied by the prison system.

IV. PARTIES TO THE SUIT:

A. Name of address of plaintiff: STEVEN MICHAEL BACKSTROM, Clements unit,
9601 spur 591, Amarillo, Tx. 79107-9606

B. Full name of each defendant, his official position, his place of employment, and his full mailing address.

Defendant #1: RICK THAYLER, Executive Director, TDCJ-ID, P.O. BOX
99, Huntsville, Tx. 77342-0099

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

Dictates sleep deprivation policy and allows unsafe equipment usage.

Defendant #2: JOHN H. ADAMS, Sr. Warden, Clements unit, 9601 spur 591,
Amarillo, Tx. 79107-9606

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

Continuosly implements sleep deprivation & runs Shoe Fact.W/unsafe
equip.

Defendant #3: STEWART WILLIAMS, Clements unit Shoe Factory Manager,
9601 spur 591, Amarillo, Tx. 79107-9606;

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

Continues to operate Shoe Factory w/unsafe equip....knowingly.

Defendant #4: ELIZABETH BOERLIN, Risk Managment Sup.....XXXXXXXXXX

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

Failed to order^{meaningful} safety meetings, Failed to order up-grades for
safe work environment concerning "DESMA" shoe machines.

Defendant #5:

C.A. HARRELL, Clements unit Program Sup.-III.....

Briefly describe the act(s) or omission(s) of this defendant, which you claimed harmed you.

Failed to notify all parties concerned about the need of up-grade
for safety on "DESMA" shoe machines.

Defendant#6; NIKELLE GRANT, Clements unit Safety Officer-I
(SAME)

Defendant#7; C.F. HAZELWOOD, T.C.I. Manufacturing Exec. Dir.
Knowingly allows unsafe work environment by failing to up-grade
"DESMA" shoe machines for safe-proof operation(see MAINgroup mach.)
Defendant#8; JOHN DOE, American Correctional Association Exec.Dir.
and its [designee,Regional Dir.];.....

Knowingly allowing such unsafe equipment to operate without up-grade.

V. STATEMENT OF CLAIM:

State here in a short and plain statement the facts of your case, that is, what happened, where did it happen, when did it happen, and who was involved. Describe how each defendant is involved. You need not give any legal argument or cite any cases of statutes. If you intent to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach extra pages if necessary, but remember that the complaint must be stated briefly and concisely. IF YOU VIOLATE THIS RULE, THE COURT MAY STRIKE YOUR COMPLAINT.; On 3/1/2011 at aprox. 0800 hrs. while being trained

by another inmate as a 'machine operator' at the W.P. Clements unit (TDCJ-ID) Shoe Factory "DESMA" soling Machine, Plaintiffs Right hand was pressed into a shoe-mold, breaking two-2 fingers, requiring surgery and causing permanent disfigurement and imparement and serious trama and disability.

*This harm occurred ~~because of "SLEEP DEPRIVATION", IMPROPER SAFETY TRAINING, IMPROPER OPERATOR TRAINING, BY INMATES UNCERTIFIED TO DO SO, AND IN GENERAL, "BEING FORCED TO WORK IN AN UNSAFE WORK ENVIRONMENT".....~~ i.e. during those hrs designated for sleep (2230 hrs-0330 hrs) inmates including myself, are only allowed to sleep in one, two or three hr. periods without being awakened by cellblock officers due to W.P. Clements unit policies and practices of waking inmates up through the night for such things as mail call, layins, meal cards issued, roster counts etc.... along with a 0300 hr wake-up for insulin and immediately followed by chow and work calls.

**This only allows an inmate (including myself) a maximum of 3-1/2 hrs. of UNinterrupted sleep. See further definition/explanation in attached Statement of Facts and Memorandum of Law....:

VI. RELIEF: State briefly exactly what you want the court to do for you. Make no legal arguments. Cite not cases or statutes.

AS PER ATTACHED COMPLAINT; -- A DECLARATION, PERMANENT INJUNCTION, FUTURE ADEQUATE TRAINING BY CERTIFIED INSTRUCTOR(S). COMPENSATORY DAMAGES OF \$10,000.00 per defendant, PUNITIVE DAMAGES OF \$100,000.00 per defendant...and a jury trial. (TO INCLUDE A "TEMPORARY" INJUNCTION UNTIL THESE CLAIMS ARE ADDRESSED ON THE MERITS) (AND UNTIL AN ADEQUATE INVESTIGATION IS CONDUCTED BY AN OUTSIDE AGENCY FOR SAFETY)..

VII. GENERAL BACKGROUND INFORMATION:

A. State, in complete form, all names you have ever used or been known by including any and all aliases:

STEVEN MICHAEL "MIKE" BACKSTROM

B. List all TDCJ-ID identification numbers you have ever been assigned and all other state or federal prison or FBI numbers ever assigned to you, if know to you.

TDCJ-ID# 1657938

VIII. SANCTIONS:

A. Have you been sanctioned by any court as a result of any lawsuit you have filed? ____ YES xxx NO

B. If your answer is "yes", give the following information for every lawsuit in which sanctions were imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed sanctions (If federal, give district and division): N/A

2. Case Number: N/A

3. Approximate date sanctions were imposed: N/A

4. Have the sanctions been lifted or otherwise satisfied? N/A YES N/A NO

Has any court ever warned or notified you that sanctions could be imposed? YES ~~XXX~~ NO

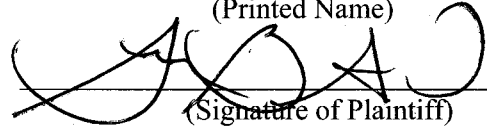
D. If your answer is "yes", give the following information for every lawsuit in which warning was imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed warning (if federal, give the district and division): N/A
2. Case number: N/A
3. Approximate date warning were imposed: N/A

Executed on: May 15, 2012
(Date)

STEVEN MICHAEL BACKSTROM

(Printed Name)


(Signature of Plaintiff)

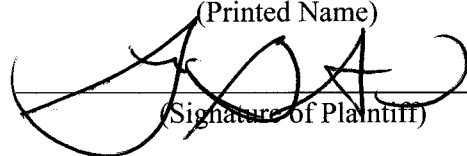
PLAINTIFF'S DECLARATIONS

1. I declare under penalty of perjury all facts presented in this complaint and attachment thereto are true and correct.
2. I understand if I am released or transferred, it is my responsibility to keep the Court informed of my current mailing address and failure to do so may result in the dismissal of this lawsuit.
3. I understand that I must exhaust all available administrative remedies prior to filing this lawsuit.
4. I understand I am prohibited from bringing an *in forma pauperis* lawsuit if I have brought three or more civil actions in a Court of the United States while incarcerated or detained in any facility, which lawsuits are dismissed on the ground they were frivolous, malicious, or failed to state a claim upon which relief may be granted, unless I am under imminent danger or serious physical injury.
5. I understand even if I am allowed to proceed without prepayment of costs, I am responsible for the entire **\$350** filing fee and costs assessed by the Court, which shall be deducted in accordance with the law from the inmate account by my custodian until the filing fee is paid.

Signed this 15th day of May, 20 12.
(Day) (Month) (Year)

STEVEN MICHAEL BACKSTROM

(Printed Name)


(Signature of Plaintiff)

WARNING: The Plaintiff is hereby advised any false or deliberately misleading information provided in response to the following questions will result in the imposition of sanctions. The sanctions the Court may impose include, but are not limbed to monetary sanctions and/or the dismissal of this action with prejudice.

IN THE UNITED STATES
DISTRICT COURT FOR THE
NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

_____	§	
STEVEN MICHAEL BACKSTROM	§	
Plaintiff pro-se	§	
V.	§	
RICK THAYLER, JOHN ADAMS, STEWART WILLIAMS,	§	
C.F. HAZELLWOOD, ELIZABETH BOERLIN, CYNTHIA	§	COMPLAINT
HARRELL, NIKELLE GRANT, JOHN DOE-(Exec.Dir.	§	
A.C.A. or Highest ranking officer assigned	§	CIVIL ACTION#: _____
to audit and/or assess the actual safety of	§	
TDCJ-ID/T.C.I. equipment & training procedures)	§	
JOHN DOE-(Exec.Dir. for the Dept. of Health Ser-		
-vices)	§	
Defendant(S)	§	
_____	§	

I. JURISDICTION & VENUE

1. This is a civil action authorized by 42 U.S.C. §1983 to redress the deprivation, under the color of state law, of rights secured by the constitution of the United States. This Hon. Court has Jurisdiction under 28 U.S.C. §1331 and 1343(A)(3). Plaintiff seeks declaratory relief pursuant to 28 U.S.C. §2201 and 2202.

Plaintiffs claims for Injunctive relief are authorized by 28 U.S.C. §2283 and 2284 and Rule 65 of the Fed. Rules of Civ. Proc....;

2. The Northern Dist. Court is an appropriate VENUE under 28 U.S.C. §1391(b)(2) due to the location where the events giving rise to these claims occurred.

II. PLAINTIFF (Pro-se)

3. Plaintiff Pro-se, Steven Michael Backstrom, is and was at all times mentioned herein, a prisoner of the State of Texas, in the custody

of the Texas Dept. of Crim. Justice-Institutional Division (TDCJ-ID), and is currently confined at the W.P. Clements unit in Amarillo, Tx..

III. DEFENDANT(S)

4. Defendant, Rick Thayler, is the Exec. Director of TDCJ-ID.

He is legally responsible for the over-all operations of the Dept. and each institution under its jurisdiction....including the W.P. Clements unit.

5. Defendant, John Adams, is the Sr. Warden of the W.P. Clements unit. He is legally responsible for the operations of the W.P. Clements unit and for the welfare of the inmates in that prison.

6. Defendant, C.F. Hazellwood, is the Exec. Director of the Texas Correctional Industries (T.C.I.) . He is legally responsible for the total operations of TDCJ-ID manufacturing operations, to include its facilities and contents therein.

7. Defendant, Stewart Williams, is the W.P. Clements unit Shoe Factory superintendant/Supervisor. He is legally responsible for the day-to-day operations of the aforementioned Shoe Factory, which includes the day-to-day welfare of all inmates under his employ during operation hours. (0445 - 1145) hrs, AND (1145 - 1500) hrs.

8. Defendant, Elizabeth Boerline, is the TDCJ-ID Risk Manager-V. She is legally responsible for assessing, reporting and rectifying any and all RISKS throughout the W.P. Clements unit....including the Shoe Factory....and TDCJ-ID in general.

9. Defendant, Cythia A. Harrell, is the W.P. Clements Program Sup. -III. She is legally responsible for assessing, reporting and rectifying any and all RISKS throughout the W.P. Clements unit.... including the Shoe Factory.

10. Defendant, Nikelle Grant, is the W.P. Clements unit Safety Officer-I. She is legally responsible for assessing, investigating,

and reporting any and all risks within the W.P. Clements unit;

11. Defendant, JOHN/JANE DOE, is the highest ranking individual (Exec.Dir.) for the American Correctional Association (A.C.A.) that is legally responsible for the certification of TDCJ-ID equipment as being 'safe'. This individual will also be responsible for investigating accidents and/or claims involving injuries while prisoners are operating TDCJ-ID owned equipment and/or machinery in association with any insurance and/or bonding agency/agent.

12. Defendant, JOHN/JANE DOE, is the Executive director and/or the highest ranking individual within the Texas Dept. of State Health Services (TDSHS) that is legally responsible for investigating claims involving injuries to prisoners due to the unsafe operations of TDCJ-ID equipment and/or T.C.I. unsafe equipment and/or machinery and whom has deemed the "DESMA" shoe machine(S)(x4) "SAFE" for operation, knowing there is another newer machine (THE MAINgroup machine) which is exemplary of what "A SAFE MACHINE" should consist of, and knowing, the 4x "DESMA" machines do NOT meet those standards.

IV. FACTS

13. On March 1, 2011, after aprox. 2½ hrs of 'final' training by another prisoner for the position of "Machine Operator" on a "DESMA" soling machine, plaintiff got his right hand caught between the shoe mold and molding ring, breaking the ^{4th} ~~4th~~ and ^{5th} ~~5th~~ digits resulting in surgery, pain and suffering, and permanent limited use of those fingers.

14. Plaintiff claims that this accident was due to the accumulation of several issues which plaintiff believe's are Constitutional Violations; 1). Sleep deprivation 2). Unsafe work environment (include are operation and safety training which are non-existent) and 3). deliberate indifference to all the above.

IV.-A. SLEEP DEPRIVATION

(Cruel and unusual punishment) (8th Amend. Violation)

15. J.M. 287 S.W. 3d 481, "those conditions which may lend themselves to an 8th Amend. Violation claim; food, warmth or exercise...

.....and Plaintiff believes that "SLEEP" is ~~an~~clusive.

16. In order to prove an 8th amend. claim, Plaintiff must show;
- 1). that deprivation alleged was sufficiently serious and;
 - 2). unnecessary infliction of pain.

*Plaintiff claims that the practices and policies of the TDCJ, specifically the W.P. Clements unit, during the months leading up to his accident, and up to the time this complaint was filed, specifically related to Sleep Deprivation, was/were a contributing factor of significance. see Exhibit #1 (spread sheet of sleep deprivation schedules).

17. Plaintiff is a 1st floor resident. The Dayrooms are right outside his door. Due to excessive noise in the section dayroom which includes the reverberation of two T.V.'s at high levels of volume and obstreperous inmates slamming domino's, yelling at the top of their voice, slamming of doors every hour for ingress/egress, even ear plugs are useless and it is practically impossible to get any sleep prior to 2230 hrs.(rack-time). However, as exhibit #1. demonstrates, inmates are subject to further unnecessary wake-up issues past 2230 hrs...

18. Plaintiff went to bed the evening prior to his accident at aprox. 2100 hrs.. After eventually falling asleep (in a state of semi-consciousness) he was awakened a minimum of 5-five times by slamming doors, slamming domino's, mail call, layin's passed out, meal card delivery and roster count (bed-book) with the later two-2 requiring plaintiff to exit his bunk to either show his I.D. Card or/and sign for said meal card, with the exception of the roster count, which could and can be conducted during rack-up as oposed to the normal time of 2240 hrs.. This roster count could be accomplished prior to 2130 hrs.. Then, at aprox. 0300 hrs. plaintiff was again awakened for an insulin call which is conducted by the pod-officer screaming out for offenders to call out their cells so-as to let out for insulin shots. There is never more than a few who need the shots, but all of us are awakened.

19. Further issues include all offenders being awakened to 'get ready' to drop for breakfast 1½ hrs. before it is time to eat (see prep. Exhibit #1) NOTE: if shoe factory workers are going to chow, this is fine, but if they are not, they should be allowed to sleep for

• another 1½ hrs rather than being forced to choose if one wants to eat or get another 1½ hrs sleep. Plaintiff ultimately received aprox. 3½ hrs. of 'uninterrupted' sleep and no more than 4½ hrs. of 'total' sleep leading up his accident. These actions by TDCJ (W.P. Clements unit) officials, without question, demonstrates 'a pattern'.....

20. This brings to light a couple of important questions;

- 1) is sleep deprivation cruel and unusual punishment, ? Especially given that it is 'a pattern', and that it is a contributing factor to plaintiff's accident, and probably in all prior and future accidents... and 2
- 2) how many hours of 'uninterrupted' sleep would deflect a future 8th amend. claim

21. Provided Exhibit #1. clearly demonstrates that it is unnecessary to conduct all of the noted deliveries and counts 'after' everyone has retired for the evening.

IV. (B)(1)...FORCED TO WORK IN AN UNSAFE ENVIRONMENT

(8th Amend. Viol.)

22. Hoptowit v. Spellman, 735 F.2d 779, 784 (9th cir. 1985);

"Person's involuntarily confined by the State, have a Constitutional right to safe conditions of confinement. The 8th Amend. entitles inmates in a penal institution to an adequate level of personal safety."

23. The W.P. Clements unit Shoe factory employees (4)-four "DESMA" soling machines and (1)-one MAIN group soling machine to finalize the manufacturing process for the Canvas deck-shoes. Upon information and belief, the (4)-four "DESMA" machines were manufactured in Germany in the early 1950's. see RUIZ v. ESTELLE, 503 F.Supp. 1265 [HN 19] "To establish a constitutional violation requires proof that the factory is so plagued by inadequate machinery as [predictably] to cause needless harm and suffering."

24. The sheer volume of injurious accidents due to unsafe machinery ("DESMA" machines specifically), in the W.P. Clements unit shoe factory is proof beyond any doubt that the work conditions do warrant this court's intervention...e.g. between Nov. 2010 and May 2011, plaintiff is aware of 4-four injurious accidents requiring extensive medical attention.

25. The "DESMA" machines have no fail-safe mechanisms of any adequacy. In fact, the 'panic'-buttons designed to stop the machines in an emergency situation are installed on a separate component

which places itself 7'2" away from the closest possible pinch-point (one-1 of 37 total pinch-points on the "DESMA" machine). The two-2 slide-valve switches are 14" away from the mold and recessed under the machine 2" which place them out-of-sight if one's hand is in peril.

The average distance between the shoe-mold and the ring (sole-mold) is 1-7/8's" (minus the thickness of a victims hand) and the average "DROP" time for the shoe-mold is 2.2 seconds (this test consisted of three different molds){with their 3-test-runs using a wrist ~~stop~~-watch}.

26. These measurements and the volume of injurious accidents is clear proof that the "DESMA" machines are 'unsafe'; however, as further proof in support of plaintiffs claims, the TDCJ/TCI W.P. Clements unit shoe factory purchased a 'MAINgroup'soling machine aprox. 3 1/2 yrs ago and based on information and belief, this new machine has logged 'zero' (Ø) accidents to date. In fact, outside of malicious acts, or an operator falling from his work-perch, it is virtually 'impossible' for anyone to be seriously injured on this new machine. This MAINgroup machine is satiated with safe-(fail-safe) mechanisms.

27. Plaintiff refers the court to Exhibit #2. (Inter-office communications to all staff and offenders) dated Oct. 7th, 2010, Subject; "Unit Safety Policy" Statement, para.-1, sentence-3, is not a true statement in regards to the "DESMA" machines, as there are NO GUARDS (SAFETY GUARDS) in place on these machines.

28. See Exhibit #2, para.-4, item-1, sentence-2.

Plant Superintendent Williams, as well as various shift supervisors, have been told that the "DESMA" machines are 'unsafe' and argued that because the machines had slide-valve switches they were safe, where, as it is, those switches are the very cause of accidents.

29. Item-6 of Exhibit #3 in an incorrect statement, if an inmate refuses to work on any "DESMA" machine under the flag claiming it to be unsafe, he will be arrested and cited for 'failing to obey an order'. See; Morgan v. Morgensen, 465 F.3d 1041 (9th cir. 2006); The ninth Circuit Court of Appeals held that 'known dangerous prison working conditions can give rise to an 8th amend. cruel and unusual

punishment claim, even where the prisoner 'volunteered' for the job." The court also held that "the supervising prison official was not entitled to qualified immunity after he ordered the prisoner to continue working on the known dangerously defective prison equipment".

Steven Morgan was incarcerated at the Monroe Correctional Complex in Washington, where every prisoner is required to work. However, one can volunteer for 'choice' higher-paying jobs, and Morgan had thus obtained a job in the prison print shop. In 2003, Morgan told his supervisor, Tom Canady, that his printing-press was seriously malfunctioning, having bucked and nearly torn off two of his fingers. Canady, anxious to complete a print job, nonetheless ordered Morgan to continue the press run but to 'be very careful'. Shortly thereafter the press caught Morgans hand and tore off his right thumb. He sued Canady and other prison officials under 42 U.S.C. § 1983 claiming 8th amend. violations of cruel and unusual punishment and 14th amend. violations for compelling him to work under dangerous conditions.

Defendants moved for summary judgement, claiming qualified immunity. The dist. ct. (U.S.D.C.-W.D. Wash.) granted summary judgement for all defendants except Canady. Canady took an interlocutory appeal to the Ninth circuit, solely on the qualified immunity ruling. The Court reviewed the ruling de novo, using the 2-prong test from "Saucier" v. Katz, 533 U.S. 194, 201(2001) to determine if the alleged conduct violated Morgan's const. rights, and if so, if Canady was on notice that his conduct was thus unconstitutional.

* As to the first prong, the court found the working conditions 'objectively, sufficiently serious' and that Canady's orders were deliberately indifferent to Morgan's safety.

*Canady defended by claiming that because Morgan worked in the print shop 'at his own choice' it was impossible to conclude that he had been 'compelled' to perform labor that endangered him.

*Morgan successfully rebutted that [b]ecause he was lawfully required to work, his choice of job did not turn that employment into a voluntary act. Thus, Morgan did not waive his 8th amend. or 14th amend rights by taking the job.

*Canady continued to argue that Morgan could have simply refused to work, resigned his job, or filed a grievance.

* The Court Ruled and recognized that Refusal of a direct order IS PUNISHABLE, and that the question of whether Morgan had any viable options was a[disputed material fact issue] not reviewable in a summary judgement motion".

** As to the second prong,[whether the asserted right was clearly established] at the time, Canady posited that the question had been addressed with mixed results in several circuits. But the Court found in-circuit support in Osolinski v. Kane, 92 F.3d 934 (9th cir. 1996). Like the current case, Osolinski involved a prisoners work supervisor ordering a prisoner to continue working with known defective equipment. Therefore, there was sufficient precedent putting Canady ON NOTICE that his actions would violate the 8th amendment.

*Accordingly, the 9th cir. affirmed the dist. cts. denial of Canady's qualified immunity-based summary judgement motion and remanded for further proceedings.

* Likewise, not only plaintiff, but many prisoners who work at the W.P. Clements unit shoe factory, (Emphasis added for those whom have been injured on the "DESMA" soling machines), have complained and questioned the constitutionality of being forced to work on these unsafe "DESMA" soling machines.....and continuously noted the clear example of just [how] 'unsafe' those machines are...in comparison to the MAINgroup (new machine) with all of its fail-safe mechanisms which demonstrate the clearly needed 'up-grading' of such safety mechanisms on the OLD "DESMA" machines. NOTE; upon order of the court such testimony may be given by any named witnesses herein.....

30. Item-8 of Exhibit #3 is also incorrect [b]ecause, by reason of hazard, no protection mechanisms have been installed to prevent any further or future injuries to prisoners working on the "DESMA" soling machines.

IV. (B)(2) INADEQUATE SAFETY AND OPERATIONS TRAINING;

31. On the W.P. Clements unit Shoe factory bulliten board is a copy of an Inter-Office Communications, dated Sept., 1, 2004, titled; "Establishing a Uniform Code of Conduct", signed by Superintendent Williams on August 31st, 2005.

**Plaintiff refers the court to item 10, quote "Supervisors will

- . only operate machinery to familiarize themselves or to show an inmate how to operate a machine...." This is untrue....only inmates train inmates how to operate the "DESMA" soling machines, and they will continue to do so...(even uncertified inmates train other inmates) incorrectly, of course.

Because shoes are being produced 'for sales purposes' in some cases, it is the mantra that 'obviously the shoes are being made properly' and 'obviously the operator(S) are adequate (whether certified or not)..?

However....again, plaintiff refers the court to observe the volume of accidents on the "DESMA" soling machine in comparison to the MAIN-group soling machine's history of accidents, and observe that it has been the same prisoners who operate the MAINgroup machine for the entire time it has been at W.P. Clements unit shoe factory (all of them are certified and very few new-comers are trained on this machine).

32. See; RUIZ v. ESTELLE, @ [HN 34] "A defendants failure to follow its own procedural rules and regulations IS AN INDEPENDENT VIOLATION OF DUE PROCESS".....

33. Referring to Exhibit #3, Item-7, there IS NO "REAL" Training provided.

34. For the most part, safety training is non-existent in regards to matters and issues related to the shoe factory. see Exhibit#4 Item-5. Actual Procedure is for shift supervisor(S) to pass around documents related to some issues 'like stringing Christmas lights' handling hot water, and improper driving issues, then have the inmates sign-off on this non-relevant stuff as-if they have been trained on issues relevant to their work environment (?) Seldom does anything on these alleged safety training sheets pertain to actual shoe factory safety issues.....and.....regardless of this fact, there is never an actual safety training 'meeting'...video....discussion afterwards... or otherwise.....JUST SIGN THE DOTTED LINE and GO BACK TO WORK...(?)

35. Please refer to Exhibit #5. which demonstrates a typical response from prison officials. Step-1 grievance response is most disparaging because Mr. Boland is the assist. plant manager, thusly everyone is 'on his crew'. Not knowing whether his supervisors are performing there jobs correctly and responsibly is cause for alarm. Connecting the dots will conclude that Mr Boland is unaware of these

traing deficiencies then Mr. Williams is also unaware....(or, at a minimum, they both are alleging to be unaware).

36. Exhibit #6 (sleep deprivation grievance) demonstrates a typical response reflex by prison officials ; 'denial of all responsibility'.

37. RUIZ @ Section VII- other conditions of confinement #3-work safety and Hygene, para. 2-3 are very clear that it is an 8th amendment violation to work under conditions which are dangerous and unsafe as well as it clearly outlines serious accidents along with unsafe and improperly used equipment due to improperly trained inmates . As well, it sheds light on the TDCJ's propensity for duplicity, as they openly state in writing on the backs of their caps..."TAKING CARE OF OUR OWN".

IV. (C) - DELIBERATE INDIFFERENCE

(14th Amend. Viol.)

38. Hernandez v. Valesquez, 522 F.3d 556, "A prison official acts with deliberate indifference for purposes of an inmates 8th Amend. claim based on conditions of confinement, only if he knows that inmates face substancial risk of serious harm and disregards that risk by failing to take reasonable measures to abate it."

39. Plaintiff must show both objective and subjective components;

- 1) Objective; the deprivation was so serious as to deprive inmates of minimal civilized measures of lifes necessities [life & Limb];
- 2) Subjective; official was both aware of facts from which infer-ence could be drawn that substancial risk of serious harm exists.

40. RUIZ @ [HN 20]- "Isolated incidents of indifference to inmates [safety] by guards and administrators.....do not give rise to claims of constitutional proportion, however, 'a pattern' of such occurences extending over a period of time or the existence of systematic def-iciencies which will inevitably lead to unnecessary pain, [injury] and distress, constitute proof of deliberate indifference."

41. In this matter, both the Objective and Subjective components, in conjunction with [HN 20], compliment and ultimately define deliberate indifference. W.P. Clements shoe factory superintendent,

Williams, has been under the employ of the TDCJ/TCI for 18+ yrs., most of which, if not all, were at the shoe factory. He (Williams) has witnessed or been made aware of most, if not all, of the injurious accidents caused by these "DESMA" soling machines. Due to this fact and that, without change, injurious accidents are imminent and that Mr. Williams has turned a blind eye, with the assistance of others, proves without question....deliberate indifference, for prisoners safety at the W.P. Clements shoe factory. (Plaintiff included).

42. Once an accident occurs at the shoe factory the information is forwarded to risk management at W.P. Clements unit, an alleged investigation ensues, and thusly, a report is generated and forwarded 'up-the-chain' which includes the Sr. Warden, Mr. Hazelwood, and Mr. THayler. Based on information and belief, the information is also forwarded to the TDSHS and the ACA....

43. See Exhibit #7, after a return letter from OSHA which referred the plaintiff to TDCJ Risk Management, Ms. Boerline, plaintiff, submitted a letter to her outlining the issue of unsafe machinery, which was met with 'silence'..(?) (See Exhibit #8)

44. In regards to inspections and/or investigations made by the W.P. Clements unit Risk Management staff, see Exhibit #2, para. 4, items 3,4, and 5; 'risk managements failure to see that the volume of accidents in themselves constitutes concern, and the refusal to condemn the equipment [or] force their retrofit defines their own deliberate indifference and renders them (Risk Management personnel) liable.

45. Upon information and belief, OSHA, effective 1970, is unable to intervene in matters such as this because the State of Texas developed[its own]"Policing Agency"...TDSHA.... This organization is designed primarily to replace O.S.H.A. regarding work-place safety within TDCJ-ID.

46. This being the case, surely the TDSHA has been advised of all the injuries plaguing the W.P. Clements unit shoe factory, and, if so, why haven't they intervened to protect inmates from this obviously seriously dangerous work environment pertaining to the "DESMA" soling machines..? And/or, [if] they have NOT been advised

WHY NOT..?

47. Upon information and belief, these injuries are not only reported to the TDSHA but also reported to the A.C.A. officials.; however, these very officials continue to 'certify' the "DESMA" soling machines as 'safe'. [I]f ACA officials are indeed aware of the injuries on the "DESMA" soling machines, regardless, regardless of the excuses given by the TDCJ officials as to why the accidents occurred, how can the machines be deemed 'as safe ?'

48. RUIZ @ [HN 18]- "while isolated incidents of negligence may not constitute sufficient basis for 42 U.S.C.A. §1983 jurisdiction, 'patterns' of negligence may.

49. Plaintiff has demonstrated deliberate indifference [b]y showing 'a pattern' of incidents , namely the volume of incidents/injuries (of which, upon request/order of evid. hearing may be produced for this hon. cts review), the fact that all the officials named within this complaint were aware of the numbers of injuries and over the decades have failed to abate them, and by exposing 'patterns' [i]n sleep deprivation , TDCJ officials regarding their own policies and procedures Re; operation and training proceduresthis and these show that all of the officials named herein should not be allowed any immunity

V. SYNOPSIS AND QUESTIONS OF LAW

50. There is no question that inmates are forced to work for TDCJ; however, inmates at the W.P. Clements unit shoe factory are forced to work under conditions that have been responsible for numerous injuries over the past 20+ yrs. without intervention from the court, there is nothing to stop the future/further injuries which includes the loss of limbs, by these "DESMA" soling machines.

51. No reasonable mind can conclude that the sole responsibility of all of these accidents[on one specific machine] (THE "DESMA") can rest upon the inmate operator given all the addressed exacerbating factorsnot to exclude the existence of the NEW MAINgroup soling machine , which has NO ACCIDENTS attached to it, proving that safe equipment/machinery exists that will accomplish the mission to man-

-ufacture shoes with the safety mechanism's available to prevent such past injuries, pain and suffering of inmates. (including plaintiff).

52. This matter breeds numerous questions that plaintiff believes a jury should deliberate;

- A). Is 3½-4 hrs of uninterrupted sleep adequate to operate dangerous, heavy, industrial equipment with a clear mind..?
- B). Does the continuing waking-up of inmates, especially when completely unnecessary, constitute "sleep deprivation"? ?
- C). Would 'sleep deprivation' be considered[a contributing factor] to any accident involving human error..?
- D). Is improper or inadequate 'training'[a contributing factor] to any accident involving human error..?
- E). Could the officials named herein actually believe that, given the preponderance of evidence within their sight and the sheer volume of injuries, their conduct or inaction(S) are lawful..?
- F). Is it plausible for the officials named to deny liability based upon truly believing he/she is not at fault..?
- G). Is it plausible for the A.C.A. officials, given their knowledge of these accidents and injuries, to 'certify' to their customers,(i.e. insurance and bonding agencies) that the W.P. Clements unit is 'safe'..?
- H). [I]f the A.C.A. is unaware of these injuries, is it due to poor communication between the TDCJ officials, poor investigation practices by the A.C.A., or, is it Fraudulent actions by either or both parties..?
- I). [I]f the TDSHS is aware of these injurious accidents, are they within their legal parameters TO DO NOTHING to circumvent these injuries..?
- J). [I]f the TDSHS is unaware of these injuries, is it due to the TDCJ officials not communicating these injuries, and, does this not constitute A CONFLICT OF INTEREST..?
- K). Is the repetitious excuse of 'operator negligence' adequate for the named defendant(S)'to bury their heads in the sand' and by doing so, does this not define liability and deliberate indifference..?

L). Should the TDCJ, A.C.A., and TDSHS, be held liable when it its very own inadequacies, practices and policies are the greater contributing factors and/or circumstances to those named accidents/injuries within the W.P. Clements unit shoe factory, .?

M). Due to information and belief plaintiff is aware of the magnificent cost to replace a "DESMA" soling machine (aprox. \$375,000.00 each for a total of \$1,500,000.00.....(could this be WHY the 60+ yr. old "DESMA" soling machine(S) (x4) are allowed to continue to work..?

5 N). In Plaintiffs opinion, "it is reasonable to conclude" that if a piece of equipment/machinery, in a private sector, caused as many injuries as have the "DESMA'S", O.S.H.A. would have condemn'd the machinery long ago and fined the owner(S) of the company who were continuing to operate such dangerously unsafe equipment. It is therefore, REASONABLE TO BELIEVE that the TDSHS should/would do likewise.. 20

53. To date, the judicial system has turned a 'blind-eye' to these types of abuses and gross deliberate indifferences for so long, in so many cases, that the chain-of-authority has become mentally immunized to any threat of liability or accountability for their actions....or in this matter, [i]nactions. Any relief is unattainable without the courts intervention and injunction as plaintiff has requested.....

VI, EXHAUSTION OF LEGAL REMEDIES...

54. Plaintiff used the prisoner grievance process available at the W.P. Clements unit in an attempt to resolve the problem. On April 21, 2011, plaintiff presented the facts related to this complaint. On April 25th, 2011, plaintiff was sent a response stating that his grievance time limits had expired. (see Exhibit #9,)

55. On April 29th, 2011, plaintiff submitted a step-2 grievance. On May 20th, 2011, plaintiff was sent a response stating his inability to file the step-2 because his step-1 was never processed due to his un-timeliness.(see Exhibit #9, pg's 2-3)

56. On June 8th, 2011, plaintiff's step-1 griev. was 're-activated' as per Huntsville Directive...!due to the nature of the claim!

The response plaintiff received stated that according to Risk Management, "there were and are guards still up/in place from the manufacturer of the machine."

This is an out-right prevarication, further resonse encumbered the plaintiff with blame. (see Exhibit #9, pg.-1 griev. res.)

57. On June 9th, 2011, plaintiff responded to TDCJ,(see Exhibit #9. pg.-4). On July 13th, 2011, TDCJ responded 'denying any respon-sibility as well as denying any relief or further action.(see; Exhibit #9, pg.-4 griev.res.)

VII. SPECIAL NOTES

58. Plaintiff has only one copy of his Exhibits with no means by which to make copies. Plaintiff is asking this hon. ct. to Order W.P. Clements unit law library to make the necessary copies to satisfy the court and one extra for return-stamped-filed for the plaintiff.....the cost to be charged to the plaintiffs Trust Fund Account. (20% of all deposits to plaintiffs account to go towards such a fee).

59. Plaintiff has spoken with numerous inmates that have been injured by the "DESMA" soling machines; however, those currently employed in the W.P. Clements shoe factory, out of fear of retaliation/retribution, fear to come forward with needed testimony. That being addressed, plaintiff believes that all of those injured inmates not under the shoe factory's employ, would step forward and plaintiff also believes that due to the number of injured inmates, A Class Action complaint may be viable as per T.R.C.P. 42...

60. Plaintiff is asking the court to review the merits of this claim and make a determination as to whether A Class Action law suit would better serve the group/court in this litigation, and file it as such at that time.

VIII. LEGAL CLAIMS

61. Plaintiff Re-alleges and incorporates by reference paragraph(S) 1-49.....

62. The 8th amend. violations of 'sleep deprivations' and 'being forced to work in an unsafe work environment' exacerbated by inadequate and non-existent operation and safety training, along with the 14th amend. violation of 'deliberate indifference' violated plaintiffs rights and constitutes cruel and unusual punishment under both the 8th and 14th amendments to the U.S. Const..

IX. PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully prays that this Hon. Court Enter Judgement Granting Plaintiff;

63. A declaration of/that acts and omissions described herein violated Plaintiffs rights under the Constitution and laws of the United States-8 & 14th amend(S);

64. A preliminary and permanent INJUNCTION Ordering the W.P. Clements shoe factory by way of its agents, to cease and desist the operation of its 4-four "DESMA" soling machine(S), so-as to prevent further injuries to inmate operators and for the W.p. Clements unit and all TDCJ officials to cease and desist all 'sleep deprivation' practices and policies.;

65. Order W.P. Clements unit officials as well as all TDCJ officials and/or their agents provide 'true' and adequate operations and safety training for those inmates operating industrial machinery/equipment which causes grievous injuries. Plaintiff asks;

66. This Court Order that all 'training' be conducted by a 'certified' trainer as opposed to another inmate who has been trained by another inmate (un-certified).

67. Compensatory Damages in the amount of \$10,000.00 against each defendant, jointly and severally;

68. Punitive Damages in the amount of \$100,000.00 against each defendant;

69. A JURY TRIAL on all issues triable by jury;

70. That defendant(S) pay all cost(S) in this suit;

71. Any additional relief this Hon. Court deems JUST, PROPER and EQUITABLE;

72. Plaintiff requests that any monetary damages awarded to plaintiff be placed in his inmate trust fund account within 30-days of Judgment and be subject to a prompt payment clause which subjects that award to an interest rate of prime interest rate plus 1% compounded monthly, excluding the first 30-days, should the State default, as well, pending any Appeals, that interest is to accrue.

SO PRAYED THIS 15th DAY OF May 2012.

Respectfully submitted,


STEVEN MICHAEL BACKSTROM

TDCJ-ID# 1657938

W.P. Clements unit(TDCJ-ID)

9601 spur 591

Amarillo, Tx. 79107-9606

VARIFICATION

I, STEVEN MICHAEL BACKSTROM, Plaintiff pro-se herein, have read the complaint and hereby varify that the matters alleged herein are true, except on matters as alleged on information and belief, and, as to those...I believe them to be true. I do certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Excuted on this 15th day of May 2012.

/s/

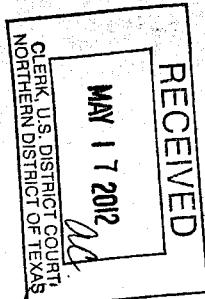
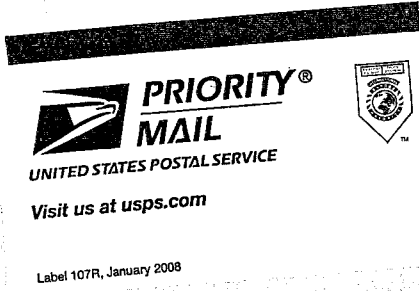

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